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[June,

thereof being on the stock of goods, and \$35 on store furniture, fixtures, and safe. The verdict and judgment were for \$1,660, the whole amount of the policy. It was further contended that there was no proof in the record of the burning of any store furniture, fixtures, or safe, and that therefore the judgment should not in any event exceed \$1,625. It was proved that the fire occurred in the night time, about half-past two o'clock, and that the store-house, together with the entire stock of goods, was destroyed. It nowhere appears in the record that there was the least contention on the trial in the court below that the above-mentioned property was not destroyed, or that anything was saved. This point does not appear to have been pressed or relied on in the court below. The facts and circumstances shown in evidence justified the jury in rendering a verdict for the whole amount of the policy.

The judgment of the Circuit Court must be affirmed.

Affirmed.

BURROWS v. SMITH, TREASURER.*

Supreme Court of Appeals: At Richmond.

March 17, 1898.

Absent, *Cardwell, J.*

1. TAXATION—*Bank stock—Deducting liabilities.* A debtor who owns national bank stock is not entitled, under Acts 1889-'90, p. 197, to have his indebtedness deducted from the value of such stock before it is assessed for taxation. Bank stock is not an evidence of debt within the meaning of the Act. Nor is the Act in conflict with sec. 5219 of the Revised Statutes of the United States.

Appeal from a decree of the Circuit Court of Culpeper county, pronounced November 9, 1895, in a suit in chancery, wherein the appellant was the complainant, and the appellee was the defendant.

Affirmed.

This was a bill in chancery filed by the appellant to enjoin the collection of the tax on one share of stock in a national bank, on the ground that the appellant owed more than was due to him by other persons, including said bank stock. The facts stated in the bill were admitted. On the hearing, the preliminary injunction which had been granted was dissolved, and the bill of the complainant dismissed.

Rixey & Barbour, for the appellant.

J. L. Jeffries and T. C. Gordon, for the appellee.

* Reported by M. P. Burks, State Reporter.

HARRISON, J., delivered the opinion of the court.

The question presented by this record is whether or not, under the Act of 1889-'90, p. 197, providing for the assessment of taxes, a debtor, who owns national bank stock, is entitled to have his indebtedness deducted from the value of such stock before it is assessed for taxation.

It is clear that no such right exists. The first subdivision of section eight of the Act provides that each person shall exhibit to the commissioner a statement in the aggregate of all *bonds, notes, and other evidences of debt* due such person in excess of one hundred dollars, and that there shall be deducted from the aggregate amount thereof all such bonds, demands, or claims not otherwise deducted, owing to others from such person as principal debtor. Bank stock is property, to be assessed at its value like all other property, and is not, as contended, an evidence of debt due to the owner within the meaning or contemplation of the assessment law.

It is contended that the Act is in conflict with sec. 5219 of the Revised Statutes of the United States, which prohibits any State from assessing for taxation the shares of stock in a national bank at a greater rate than is assessed upon other moneyed capital.

The object of sec. 5219 of the Revised Statutes was to prevent the States from discriminating against national banks in the matter of taxation. The assessment law, Acts 1889-'90, p. 197, does not, and was not intended to, discriminate against national banks. Under the Act, taxpayers cannot deduct their indebtedness from the value of their investments in any kind of stock, banking or otherwise; that privilege is confined by the terms of the Act to bonds, notes, and other evidences of debt, the object being to prevent double taxation.

For these reasons the decree of the Circuit Court must be affirmed.

Affirmed.

NOTE.—The National Banking Act provides that the shares of national banks shall not be taxed, in any State, "at a greater rate than is assessed upon *other moneyed capital* in the hands of individual citizens of such State."—U. S. Rev. Stat. 5219. Precisely what is meant by "*other moneyed capital* in the hands of individuals" has given rise to much discussion and to much litigation. And though the question, in several aspects, has been passed upon by the Supreme Court of the United States in a number of cases, the precise question involved in the principal case does not seem to have been adjudicated by that court. See *Mercantile Nat. Bank v. New York*, 121 U. S. 138, reviewing previous cases; *Bank v. Boston*, 125 U. S. 67; *Talbott v. Silver Bow County*, 139 U. S. 447.

It may plausibly be argued that a private individual who lends money comes

directly in competition with the national bank. Under the Virginia Taxing Act, referred to in the principal case, the private individual is permitted to deduct from the aggregate amount of such loans all debts owed by him as principal debtor—a privilege not granted to the holder of the shares of national banks. And hence results the discrimination prohibited by the National Banking Act. Such seems to have been the decision of Hughes, J., in *Bank v. Richmond*, 39 Fed. 309.

Yet it is not clear that such discrimination is not rather apparent than real. The debts which the individual is allowed to deduct from the aggregate of his moneyed capital are not thereby exempted from taxation; the creditor to whom such debts are due is required to list them for taxation—the debtor being allowed to deduct them, as well said by the learned court in the principal case, in order that the same subject-matter shall not bear double taxation. On the other hand, a tax laid on shares of bank stock, without allowance for the holder's indebtedness, would seem not to subject either the shares or the indebtedness to double taxation, any more than would the tax upon the value of a horse, without allowing any deduction for the owner's general indebtedness.

We understand that the precise question is now pending in the Circuit Court of Appeals at Richmond, in a group of cases which went up from Lynchburg.